

1 **FEDERAL ELECTION COMMISSION**

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3 **FIRST GENERAL COUNSEL'S REPORT**

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5 RAD REFERRAL 18L-30

6 DATE OF REFERRAL: August 28, 2018

7 DATE OF NOTIFICATION: August 29, 2018

8 DATE ACTIVATED: December 4, 2018

9
10 Earliest SOL: July 11, 2021

11 Latest SOL: July 31, 2021

12 ELECTION CYCLE: 2016

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14 **SOURCE:**

RAD Referral

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16 **RESPONDENTS:**

American Delta Party and Suzan Korth in her
official capacity as treasurer

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19 **RELEVANT STATUTES
20 AND REGULATIONS:**

52 U.S.C. § 30116(a)(1)(B)

52 U.S.C. § 30116(f)

52 U.S.C. § 30118(a)

11 C.F.R. § 100.52(d)(1)

11 C.F.R. § 103.3(b)

11 C.F.R. § 110.1(c)(1)

11 C.F.R. § 110.1(e)

11 C.F.R. § 110.1(g)(5)

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29 **INTERNAL REPORTS CHECKED:** Disclosure Reports

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31 **FEDERAL AGENCIES CHECKED:** None

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33 **I. INTRODUCTION**

34 The Commission's Reports Analysis Division ("RAD") referred American Delta Party
35 and Suzan Korth in her official capacity as treasurer ("Committee") to the Office of General
36 Counsel for receipt of a \$25,000 excessive contribution from an individual and a \$7,000
37 prohibited contribution from a limited liability corporation ("LLC") disclosed on its 2016 August
38 Monthly Report.¹ The Committee did not respond to the RAD Referral. For the reasons

¹ RAD Referral at 1 (Aug. 28, 2018).

1 discussed below, we recommend that the Commission open a MUR, find reason to believe that
2 the Committee accepted excessive and prohibited contributions, and authorize pre-probable
3 cause conciliation with the Committee.

4 II. FACTUAL AND LEGAL ANALYSIS

5 A. Facts

6 On July 11, 2016, the Committee received a contribution of \$7,000 for “in-kind
7 professional fees” from Direct Contact Voter Solutions, LLC (“Direct Contact”).² On July 31,
8 2016, the Committee received a \$30,000 contribution in the form of a loan from an individual,
9 Roque De La Fuente.³ After RAD reviewed the Committee’s 2016 August Monthly Report, it
10 sent a Request for Additional Information (“RFAI”) to the Committee regarding these
11 contributions.⁴

12 The Committee told RAD that the \$7,000 LLC contribution was an in-kind contribution
13 and it was unsure how the Committee would disclose a refund.⁵ RAD informed the Committee
14 that it must pay the vendor for the goods or services it provided.⁶ The Committee then asked

² Committee 2016 August Monthly Report at 7. We have not found any public information on Direct Contact Voter Solutions, LLC, but there is a similarly-named LLC registered at the same address, Direct Contact Voter Services, LLC.

³ Committee 2016 August Monthly Report at 6.

⁴ See RFAI dated Dec. 27, 2016.

⁵ RAD Referral at 2 (Feb. 8, 2017 communication).

⁶ *Id.* RAD also informed the Committee that it had not responded to an earlier RFAI concerning the Committee’s amended Statement of Organization, which indicated that the Committee was a national committee for the “WAD” party. See RFAI dated July 25, 2016; see also Committee’s Amended Statement of Organization (June 28, 2016). This RFAI stated “before using the contribution limits and/or statutes applicable for national parties, your committee must petition the Commission for an advisory opinion to determine if it satisfies the criteria for national party status.” See RFAI at 1. On April 20, 2017, the Committee filed an advisory opinion request with the Commission to obtain status as a national committee of a political party. See PreAOR 388 (American Delta Party). On April 28, 2017, OGC notified the Committee that its request was incomplete and additional information was needed. *Id.*, Letter from Anthony Buckley, Attorney, OGC, to William G. Anderson, Counsel to the Committee (Apr. 28, 2017) (“OGC Letter”). In the letter, OGC requested a copy of the Committee’s by-laws and other

1 RAD for clarification on reporting the refund of the \$25,000 excessive portion of De La Fuente's
2 contribution.⁷

3 RAD had follow-up discussions with the Committee in November 2017 regarding the
4 Direct Contact and De La Fuente contributions.⁸ The Committee stated that it did not have
5 sufficient funds to refund the excessive contribution or to reimburse the vendor for the
6 apparently prohibited in-kind contribution.⁹ The Committee has not refunded these contributions
7 to date. The Committee did not respond to the RAD Referral.

8 B. Legal Analysis

9 The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits political
10 committees from knowingly accepting any contribution in violation of the provisions of
11 52 U.S.C. § 30116.¹⁰ The Act provides that no person shall make contributions to any political
12 committee that is not an authorized committee or a political party committee in any calendar year
13 which, in the aggregate, exceed \$5,000.¹¹ Thus, by receiving a contribution of \$30,000 from

organizing documents, and other information. See OGC Letter at 1, 2. The Committee did not respond to OGC's letter.

⁷ See RAD Referral at 2 (Feb. 15, 2017 communication). If the Committee had national party committee status, see note 6, De La Fuente's \$30,000 contribution would have been within the limits. See 52 U.S.C. § 30116(a)(1)(B). De La Fuente was the presidential candidate of the American Delta Party and the Reform Party of Florida in the 2016 Presidential general election. See <https://transition.fec.gov/pubrec/fe2016/2016presgeresults.pdf>. De La Fuente also ran for a variety of other federal offices in 2016 and 2018. See <http://www.thegreenpapers.com/P16/D>; https://ballotpedia.org/Roque_De_La_Fuente; Reuben Fischer, *Rocky De La Fuente Ran in Nine Senate Primaries and Lost Them All*, WASHINGTON POST (Sept. 25, 2018), https://www.washingtonpost.com/graphics/2018/politics/rocky-de-la-fuente//noredirect=on&utm_term=.bb82e3576f78.

⁸ RAD Referral at 3, 4.

⁹ *Id.* at 4. The Committee reported \$1,386 in cash-on-hand on its 2019 February Monthly Report, which is the latest report filed by the Committee. The Committee also reports an outstanding balance of \$32,723.25 of loans owed to De La Fuente. *Id.* at 13.

¹⁰ 52 U.S.C. § 30116(f).

¹¹ 52 U.S.C. § 30116(a)(1)(C).

1 De La Fuente, the Committee accepted an excessive contribution of \$25,000 from him. We
2 recommend that that the Commission find reason to believe that the Committee accepted an
3 excessive contribution from De La Fuente in violation of 52 U.S.C. § 30116(f).

4 The Act defines "contribution" to include anything of value made by any person for the
5 purpose of influencing any election for Federal office.¹² "Anything of value" includes all in-
6 kind contributions and unless otherwise exempted, the provision of any goods or services
7 without charge or at a charge that is less than the usual and normal charge for such goods or
8 services.¹³ The Act and Commission regulations prohibit corporations from making
9 contributions to a federal political committee (other than an independent-expenditure-only
10 political committee), and a political committee is prohibited from knowingly accepting or
11 receiving such contributions.¹⁴

12 The Committee accepted a contribution of \$7,000 for "in-kind professional fees" from
13 Direct Contact.¹⁵ Accordingly, we recommend that the Commission find reason to believe that

¹² 52 U.S.C. § 30101(8)(A)(i).

¹³ See 11 C.F.R. § 100.52(d)(1).

¹⁴ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

¹⁵ Contributions by limited liability companies, such as Direct Contact, are considered corporate or partnership contributions depending on whether the LLC elects to be treated as a partnership or as a corporation by the Internal Revenue Service ("IRS"). See 26 C.F.R. § 301.7701-3. An LLC that elects to be treated as a partnership or makes no partnership or corporate designation and an LLC that is a single natural person member that makes no designation to be treated as a corporation shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm that it is eligible to make the contribution. 11 C.F.R. § 110.1(g)(5). When such LLC makes an in-kind contribution, it similarly has an obligation to provide this information to the committee. Section 110.1(g)(5) does not apply to Direct Contact if it is treated as a corporation. In RAD's review process, if a receipt from an LLC fails to include the disclosure of one or more partners, an RFAI will be sent for an apparent prohibited contribution.

Here, RAD referred the Committee's receipt of Direct Contact's contribution to OGC as an apparent prohibited contribution, and we do not have information whether Direct Contact is treated as a partnership or as a corporation for purposes of the Internal Revenue Code. If Direct Contact has elected to be treated as a partnership by the IRS, the contribution limit is \$5,000 and the contribution is attributed to the partnership and to each partner in direct proportion to his or her share of the partnership profits according to instructions which shall be provided by the partnership to the political committee or by agreement of the partners as further set forth in 11 C.F.R.

1 the Committee accepted an in-kind prohibited contribution of \$7,000 from Direct Contact in
2 violation of 52 U.S.C. § 30118(a).¹⁶

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§ 110.1(e)(2). *See* 11 C.F.R. § 110.1(e). Thus, if it is treated as a partnership, the Committee accepted an excessive contribution of \$2,000 from Direct Contact.

¹⁶ The Committee received total contributions of \$38,431 and made a total of \$36,445 in disbursements during the 2016 election cycle. While this amount is not particularly large, the Committee met RAD's referral threshold, and the contributions from De La Fuente and Direct Contact that are part of the referral represent or of the total contributions. *See* <https://www.fec.gov/data/committee/C00620377/?cycle=2016>.

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** American Delta Party and
6 Suzan Korth in her official
7 capacity as treasurer

MUR _____

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9 **I. INTRODUCTION**

10 This matter was generated based on information ascertained by the Federal Election
11 Commission (“Commission”) in the normal course of carrying out its supervisory
12 responsibilities. The Commission’s Reports Analysis Division (“RAD”) referred American
13 Delta Party and Suzan Korth in her official capacity as treasurer (“Committee”) to the Office of
14 General Counsel for receipt of a \$25,000 excessive contribution from an individual and a \$7,000
15 prohibited contribution from a limited liability corporation (“LLC”) disclosed on its 2016 August
16 Monthly Report.¹ The Committee did not respond to the RAD Referral. For the reasons
17 discussed below, the Commission finds that there is reason to believe that the Committee
18 accepted excessive and prohibited contributions.

19 **II. FACTUAL AND LEGAL ANALYSIS**

20 **A. Facts**

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22 professional fees” from Direct Contact Voter Solutions, LLC (“Direct Contact”).² On July 31,
23 2016, the Committee received a \$30,000 contribution in the form of a loan from an individual,

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² Committee 2016 August Monthly Report at 7. There is no public information on Direct Contact Voter Solutions, LLC, but there is a similarly-named LLC registered at the same address, Direct Contact Voter Services, LLC.

1 Roque De La Fuente.³ After RAD reviewed the Committee's 2016 August Monthly Report, it
2 sent a Request for Additional Information ("RFAI") to the Committee regarding these
3 contributions.⁴

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5 and that it was unsure how the Committee would disclose a refund.⁵ RAD informed the
6 Committee that it must pay the vendor for the goods or services it provided.⁶ The Committee
7 then asked RAD for clarification on reporting the refund of the \$25,000 excessive portion of
8 De La Fuente's contribution.⁷

9 RAD had follow-up discussions with the Committee in November 2017 regarding the
10 Direct Contact and De La Fuente contributions.⁸ The Committee stated that it did not have
11 sufficient funds to refund the excessive contribution or to reimburse the vendor for the

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⁸ RAD Referral at 3, 4.

1 apparently prohibited in-kind contribution.⁹ The Committee has not refunded these contributions
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4 The Federal Election Campaign Act of 1971, as amended (the “Act”), prohibits political
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6 52 U.S.C. § 30116.¹⁰ The Act provides that no person shall make contributions to any political
7 committee that is not an authorized committee or a political party committee in any calendar year
8 which, in the aggregate, exceed \$5,000.¹¹ Thus, by receiving a contribution of \$30,000 from
9 De La Fuente, the Committee accepted an excessive contribution of \$25,000 from him. The
10 Commission finds that there is reason to believe that the Committee accepted an excessive
11 contribution from De La Fuente in violation of 52 U.S.C. § 30116(f).

12 The Act defines “contribution” to include anything of value made by any person for the
13 purpose of influencing any election for Federal office.¹² “Anything of value” includes all in-
14 kind contributions and unless otherwise exempted, the provision of any goods or services
15 without charge or at a charge that is less than the usual and normal charge for such goods or
16 services.¹³ The Act and Commission regulations prohibit corporations from making
17 contributions to a federal political committee (other than an independent-expenditure-only

⁹ *Id.* at 4. The Committee reported \$1,386 in cash-on-hand on its 2019 February Monthly Report, which is the latest report filed by the Committee. The Committee also reports an outstanding balance of \$32,723.25 of loans owed to De La Fuente. *Id.* at 13.

¹⁰ 52 U.S.C. § 30116(f).

¹¹ 52 U.S.C. § 30116(a)(1)(C).

¹² 52 U.S.C. § 30101(8)(A)(i).

¹³ *See* 11 C.F.R. § 100.52(d)(1).

